

(iv) The proposed retention incentive percentage rate and a justification for that percentage;

(v) The timing and method of making the retention incentive payments;

(vi) The service period required; and

(vii) Any other information pertinent to the case at hand.

(3) OPM may require that waiver requests for groups or categories of employees be coordinated with other agencies having similarly situated employees in the same category.

(4) Notwithstanding §575.310(f), an authorized agency official must require a signed written service agreement for any employee who may receive a higher retention incentive as a result of approval of a waiver of the maximum limit on the amount of a retention incentive under paragraph (e)(1) of this section.

(f) An agency may not offer or authorize a retention incentive for an individual prior to employment with the agency.

(g) An agency may not commence a retention incentive service agreement (or begin paying a retention incentive) during a period of employment established under any service agreement required for payment of a recruitment incentive under 5 CFR part 575, subpart A, or a relocation incentive under 5 CFR part 575, subpart B. After a retention incentive service agreement has commenced (or retention incentive payments have commenced), an agency may pay a relocation incentive without affecting the payment of a retention incentive.

(h) A retention incentive is not part of an employee's rate of basic pay for any purpose.

(i) Payment of a retention incentive is subject to the aggregate limitation on pay under 5 CFR part 530, subpart B.

§575.310 Service agreement requirements.

(a) Before paying a retention incentive, an agency must require an employee, including each employee covered by a group retention incentive authorization and any employee who may receive a higher retention incentive as a result of an approved waiver of the maximum limit on the amount of a retention incentive under §575.309(e), to

sign a written service agreement to complete a specified period of employment with the agency (or successor agency in the event of a transfer of function). An authorized agency official must determine the length of a service period. A written service agreement is not required under the condition described in paragraph (f) of this section.

(b) The service agreement must include the commencement and termination dates of the required service period. The service period must begin on the first day of a pay period and end on the last day of a pay period.

(c) The service agreement must specify the retention incentive percentage rate established under §575.309(a); whether the incentive will be paid in installments or in a lump-sum payment upon completion of the service period provided in the service agreement; whether any installment payments will be paid at less than the full retention incentive percentage rate established under §575.309(a), with the accrued but unpaid incentive payment being paid in a lump sum upon completion of the full service period required by the service agreement under §575.309(c)(2); and the timing of incentive payments.

(d) The service agreement must include the conditions under which the agency must terminate the service agreement before the employee completes the agreed-upon service period (*i.e.*, if an employee is demoted or separated for cause, receives a rating of record of less than "Fully Successful" or equivalent, or otherwise fails to fulfill the terms of the service agreement) under §575.311. The service agreement must specify the effect of a termination, including the conditions under which the agency will pay an additional retention incentive payment for partially completed service under §575.311(e) and (f).

(e) The service agreement may include any other terms or conditions that, if violated, will result in a termination of the service agreement under §575.311(b). For example, the service agreement may specify the employee's work schedule, type of position, and

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the duties he or she is expected to perform. In addition, the service agreement may address the extent to which periods of time on detail, in a nonpay status, or in paid leave status are creditable towards the completion of the service period.

(f) A written service agreement is not required if the agency—

(1) Pays the retention incentive in biweekly installments; and

(2) Sets each biweekly installment payment at the full retention incentive percentage rate established for the employee under § 575.309(a).

[70 FR 25747, May 13, 2005, as amended at 70 FR 74996, Dec. 19, 2005]

§ 575.311 Continuation, reduction, and termination of retention incentives.

(a) An authorized agency official may unilaterally terminate a retention incentive service agreement based solely on the management needs of the agency. For example, an agency may terminate a service agreement when the employee's position is affected by a reduction in force, when there are insufficient funds to continue the planned retention incentive payments, when conditions no longer warrant payment at the level originally approved or at all, or when the agency assigns the employee to a different position (if the different position is not within the terms of the service agreement).

(b) An authorized agency official must terminate a retention incentive service agreement if the employee is demoted or separated for cause (*i.e.*, for unacceptable performance or conduct), if the employee receives a rating of record (or an official performance appraisal or evaluation under a system not covered by 5 U.S.C. chapter 43 or 5 CFR part 430) of less than "Fully Successful" or equivalent, or if the employee otherwise fails to fulfill the terms of the service agreement.

(c) The termination of a service agreement is not grievable or appealable.

(d) The agency must notify an employee in writing when it terminates a retention incentive service agreement.

(e) If an authorized agency official terminates a service agreement under paragraph (a) of this section, the employee is entitled to retain any reten-

tion incentive payments that are attributable to completed service and to receive any portion of a retention incentive payment owed by the agency for completed service.

(f) If an authorized agency official terminates a service agreement under paragraph (b) of this section, the employee is entitled to retain retention incentive payments previously paid by the agency that are attributable to the completed portion of the service period. If the employee received retention incentive payments that are less than the amount that would be attributable to the completed portion of the service period, the agency is not obligated to pay the employee the amount attributable to completed service, unless the agency agreed to such payment under the terms of the retention incentive service agreement.

(g)(1) For retention incentives that are paid when no service agreement is required under § 575.310(f), an agency must review each determination to pay the incentive at least annually to determine whether payment is still warranted. An authorized agency official must certify this determination in writing.

(2) An agency may continue paying a retention incentive to an employee when no service agreement is required as long as the conditions giving rise to the original determination to pay the incentive still exist.

(3) An agency must reduce or terminate a retention incentive authorization when no service agreement is required whenever payment at the level originally approved is no longer warranted. An agency may consider the following factors in determining whether to reduce or terminate a retention incentive—

(i) Whether a lesser amount (or none at all) would be sufficient to retain the employee (or group or category of employees);

(ii) Whether labor-market factors make it more likely (or reasonably likely) to recruit a candidate with competencies similar to those possessed by the employee (or group or category of employees);

(iii) Whether the agency's need for the services of the employee (or group